



IN THE

Supreme Court of the United States

October Term, 1976
No. 76-677

RONNY G. SAYLORS, *et al.*,

Petitioners,

vs.

UNITED STATES OF AMERICA, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit.

REPLY BRIEF FOR PETITIONERS.

SCOTT J. TEPPER,
1800 Century Park East, Suite 200,
Los Angeles, Calif. 90067,

BEN MARGOLIS,
3600 Wilshire Boulevard, Suite 2200,
Los Angeles, Calif. 90010,

ERIC A. SEITZ,
3049-B Kalihi Street,
Honolulu, Hawaii 96819,

RAY P. McCCLAIN,
123 Meeting Street,
Charleston, S.C. 29402,
Attorneys for Petitioners.

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REPLY BRIEF FOR PETITIONERS.

Petitioners have received Respondents' Memorandum, wherein they contend that the issues presented herein are identical to those presented in *United States v. Larionoff*, No. 76-413 (cert. grtd. Dec. 6, 1976), and that the Court should simply "hold" this case until a decision is reached in *Larionoff*.

The *Larionoff* record is incomplete and is inadequate for the purpose of review on certiorari. *Larionoff* proceeded in the district court simply on the theory that there had been a breach of plaintiffs' contracts as a result of regulatory changes. Thereafter, and *after* the statute had been amended by Pub.L. 93-277, the Court of Appeals *sua sponte* decided, without briefing or further augmentation of the record (by way of

a rule *nisi*), the issue of whether or not there had been a breach by virtue of statutory amendments. The record in *Larionoff* (and the appendix in this Court as well) is incomplete since it does not include all of the relevant regulations and directives which pertain to *statutory* entitlement to VRB. Further, the record in *Larionoff* is not as complete as that in *Saylor*s on the issue of *actual* reliance on the part of the *Larionoff* plaintiffs below on the Navy's promise to pay VRB to them, which induced them to change their positions detrimentally. These issues have been presented in the record of the consolidated *Saylor*s cases. This Court should have the benefit of the record in *Saylor*s before reaching a decision on the important issues of law and policy presented herein.

Petitioners agree that some of the issues presented in the two cases are similar; but Petitioners' case is based entirely upon a purported breach of contract, or denial of property rights, arising from legislative amendment to 37 U.S.C. § 308(g) (1968). The *Larionoff* Respondents primarily contend that their contract or property rights were abrogated by retroactive application to them of *regulations* promulgated after their detrimental reliance on inducements to re-enlist.

The instant case, however, presents the additional important question of whether or not the Government should be *estopped*¹ by virtue of the statute and its use and reliance thereon from denying payment to these Petitioners of their re-enlistment bonuses. The record below in this action demonstrates that each peti-

¹See Petition, Questions Presented, No. 3, p. 2. The Court of Appeals in *Larionoff* did not reach the question—Petition, p. 10a; and it was not a point primarily relied on by Respondents in that case.

tioner agreed to re-enlist for an additional subsequent two or three years (at the time of his or her *initial* enlistment) as a result of the inducement of payment based upon the statute of a formulated variable re-enlistment bonus upon commencing the re-enlistment period. Thereafter, Congress amended 38 U.S.C. § 308 to remove authority to pay such a bonus,² but the Navy refused to discharge the Petitioners and instead has required each to complete his or her re-enlistment period without paying the inducement therefor. Certainly the important issue of estoppel should be thoroughly briefed and argued,³ but it is not raised in the Solicitor General's Petition, nor otherwise dealt with in *Larionoff*.

For the reasons stated herein, and because this case presents a more complete record and more comprehensive treatment of all the issues presented in the "VRB litigation" than does *Larionoff*,⁴ Petitioners herein urge that a writ of certiorari herein be issued to the Court of Appeals for the Ninth Circuit and that this case be consolidated with *Larionoff* for briefing and/or argument at least as to these additional issues.

²But, *query*, whether the statute should be interpreted to apply retroactively, or if such an interpretation would raise constitutional questions which should be avoided. Cf. Petition, Questions Presented, No. 2, p. 2. *Wm. Danzer & Co. v. Gulf R. R.*, 268 U.S. 633 (1925).

³See, e.g., *Moser v. United States*, 341 U.S. 41 (1951).

⁴In addition, some of the thorny threshold questions concerning class action treatment which are ultimately presented in *Larionoff* (although not raised by the Solicitor General) are not presented in these consolidated non-class cases. Should the Court determine to dispose of or otherwise remand *Larionoff* on Rule 23, F.R.Civ.P. grounds, the issues-in-chief could still be plenarily examined. See *Larionoff* Petition, Appendix, pp. 33a-49a.

In the alternative, and only if the writ of certiorari is not issued at this time, request is hereby made for permission to file an amicus curiae brief in *Larionoff* and for the right to participate in the argument therein on the issues not covered therein.

Dated: February 11, 1977.

Respectfully submitted,

SCOTT J. TEPPER,

BEN MARGOLIS,

ERIC A. SEITZ,

RAY P. McClain,

Attorneys for Petitioners.